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OFFICE OF PETITIONS

In re Application of
Waring et al.
Application No. 09/973,574
Filed: October 9, 2001
Attorney Docket No. A3382-007220.0135

: DECISION GRANTING
: PETITION

This is a decision on the petition filed January 3, 2002 (certificate of mailing date December 3, 2001) entitled, "PETITION TO ACCORD FILING DATE", requesting that the above-identified application be accorded a filing date of October 9, 2001 rather than the presently accorded filing date of October 5, 2001. The petition will be treated under 37 CFR 1.10(d).

Petitioners request the later filing date on the basis that the application was deposited in Express Mail service of the United States Postal Service (USPS) on October 9, 2001, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of Express Mail label no. EL866934929US showing a "date-in" of October 5, 2001 and a USPS date stamped postmark of October 9, 2001. The same Express Mail label number is found on the original application papers. In addition, petitioners have submitted a copy of Baker & Botts Express Mail log for October 9, 2001 showing that an Express Mail package bearing the Express Mail label no. EL866934929US was mailed.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in s 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed January 3, 2002, is accompanied by the corroborating evidence required by the rule.¹ Accordingly, the petition is granted.

No petition fee has been or will be charged in connection with this matter.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to October 9, 2001.

Thereafter, the application will be forwarded to Technology Center Art Unit 1762 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ For future reference with respect to Rule 1.10(d) petitions, the individual who created the particular mail log entry should provide a statement explaining his/her role in creating the entry.